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IN THE

Supreme Court of the United States

October Term, 1962
No. 53

GEORGE D. KER and DIANE K. KER,
Petitioners,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

On Writ of Certiorari to the District Court of Appeal of California, Second Appellate District.

RESPONDENT'S BRIEF.

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RESPONDENT'S BRIEF.

Introduction.

In 1949, this Court first held that the "security of one's privacy against arbitrary intrusion by the police" is a right "implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause." (*Wolf v. Colorado*, 338 U. S. 25, 27-28, 93 L. Ed. 1782, 69 S. Ct. 1359.) In 1954 this Court said: "Now that the Wolf doctrine is known to them, state courts may wish further to reconsider their evidentiary rules." (*Irvine v. California*, 347 U. S. 128, 134, 98 L. Ed. 561, 74 S. Ct. 381.)

On April 27, 1955, the California Supreme Court announced that it had reconsidered its former policy

and it adopted, as one of evidence applicable in the courts of California, the rule excluding, in criminal trials, evidence obtained by means of an unlawful search and seizure. (*People v. Cahan*, 44 Cal. 2d 434, 282 P. 2d 905.) Speaking for a majority of the Court, Justice Traynor said (44 Cal. 2d at p. 451, 282 P. 2d at p. 915):

> ". . . [T]he adoption of the exclusionary rule need not introduce confusion into the law of criminal procedure. Instead, it opens the door to the development of workable rules governing searches and seizures and the issuance of warrants that will protect both the rights guaranteed by the constitutional provisions and the interest of society in the suppression of crime."

In the course of developing such "workable rules" the California appellate courts have decided, since April 1955, more than 500 cases involving the law of search and seizure.[1] (See annotations in 21A McKinney's New California Digest, pp. 653-689, and 1962 Supplement, pp. 49-89. See, also, discussion in 44 Cal. Jur. 2d, pp. 262-417.) The instant case is the first, since *Cahan*, to engage the attention of this Court. It is likewise the first, from any state, to engage this Court's attention since the determination in *Mapp* that "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court." (*Mapp v. Ohio*, 367 U. S. 643, 655, 6 L. Ed. 2d 1081, 81 S. Ct. 1684.)

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[1] A reasonably comprehensive alphabetical list will be found at the conclusion of this brief. (App. A.)

Statement of the Case.

By information filed by the District Attorney of Los Angeles County, petitioners were charged with possessing marijuana on July 27, 1960, in violation of Section 11530 of the California Penal Code. [Tr. of R. p. 1.] They entered pleas of not guilty and, at the commencement of the trial, made a motion to dismiss the information pursuant to Section 995 of the Penal Code upon the ground that they had been held to answer without reasonable or probable cause. Evidence was taken out of the presence of the jury, whereupon the motion was denied. [Tr. of R. pp. 2-3.] At the conclusion of the trial, petitioners were found guilty as charged in the information, their motion for new trial was denied, probation was granted petitioner Diane Ker on condition that she serve six months in the county jail, and probation was denied to petitioner George Ker, who was sentenced to state prison for the term prescribed by law. [Tr. of R. pp. 6-11.] They appealed from the judgment and the denial of their new trial motion to the District Court of Appeal, which, on August 29, 1961, affirmed the judgment and order. (*People v. Ker*, 195 Cal. App. 2d 246, 15 Cal. Rptr. 767.) A hearing was denied by the California Supreme Court October 25, 1961, and the petition for certiorari was granted January 22, 1962. [Tr. of R. p. 158.]

Statement of Facts.

On July 25, 1960, a confidential informant introduced Sergeant Dennis A. Cook, a Los Angeles County Sheriff's deputy, to one William Terrhagen. At the latter's home, Cook made arrangements to buy a pound of marijuana. [Tr. of R. p. 17.] Terrhagen told

Cook and the informant to go to Lou's Barbecue, on Rosecrans Avenue in Gardena, near Normandie Avenue. The two men did so, meeting Terrhagen at about 8:20 p.m. [Tr. of R. pp. 17-18.] Terrhagen told Cook that he was unable to "get a hold" of the connection at that time but could get the marijuana for him later. They then had a conversation about heroin and Terrhagen sold Cook a small quantity of heroin for $6. [Tr. of R. p. 18.]

The following day, July 26, Cook telephoned Terrhagen at his home at about 7 p.m., stating that he wanted the marijuana they had previously discussed. Terrhagen told him to wait where he was, saying he would pick him up. [Tr. of R. p. 18.]

Terrhagen picked up Cook and drove to the Tropicana Bowling Lanes in Inglewood. He parked in the parking area, explaining he was to meet his "connection" inside, and asked Cook to wait for him. Terrhagen entered the bowling alley and returned in about five minutes. He told Cook he had talked to the "connection" and that the latter was waiting for another man who wanted some marijuana. He said they were to meet "up by the oil fields" near Fairfax and Slauson Avenues. As Terrhagen pulled out of the parking area, he pointed to a 1946 DeSoto, identifying it as the "connection's" car. [Tr. of R. pp. 18-19.]

The two men drove to the vicinity of Slauson and Fairfax, where Cook saw the 1946 DeSoto turning north on Fairfax ahead of them, and Terrhagen again identified it, explaining that the "connection" kept his supply of narcotics "somewhere up in the hills," and he would return. They parked by some vacant fields north of the intersection. Terrhagen asked Cook for the

$70 he had agreed to pay for the marijuana, and Cook gave him the money. [Tr. of R. pp. 19-20.]

Shortly after 8 p.m. Cook saw the DeSoto returning southbound on Fairfax. It went past their car, made a U-turn and pulled up alongside it. Cook observed the driver and recognized him from "mug" photographs as Roland Murphy. Cook had previously learned from other narcotics officers that Murphy "was engaged in the large scale selling of Marijuana, and that at that time he was out on bail for two other Marijuana cases." [Tr. of R. p. 20.]

While Cook waited, Terrhagen got out of his car and entered the DeSoto. Murphy drove Terrhagen northbound on Fairfax into the oil fields up and over a hill, and out of Cook's sight. In about 10 or 15 minutes they returned, driving southbound on Fairfax, went past Terrhagen's car, made a U-turn and pulled up alongside it. Terrhagen got out of Murphy's car, carrying a kilo brick of marijuana, and entered his own. Murphy drove north on Fairfax toward the oil fields and out of Cook's sight. Terrhagen made a U-turn and returned Cook to his home, where he cut a pound of marijuana from the brick, weighed it and gave it to Cook. [Tr. of R. p. 20.]

The same evening, Cook reported what had occurred to Sergeant Elvis A. Warthen, Deputy Leo Berman and to a number of other officers. [Tr. of R. p. 21.] Warthen had also "observed the occurrence" testified to by Cook. [Tr. of R. p. 23.]

On the evening of the following day, July 27, Warthen and Deputy Marvin J. Markman placed Murphy under surveillance. According to Warthen, they followed him as he drove in the DeSoto from his home

in Gardena to the same bowling alley where Cook had met Terrhagen the previous night. Murphy entered the bowling alley, remaining inside for about ten minutes, emerged, drove to a house on 102nd Street, then the officers lost sight of his car. [Tr. of R. p. 23.]

Warthen and Markman drove to the vicinity of Slauson and Fairfax, turned north on Fairfax and parked at the top of a hill. Seated in a car beside an open field with the lights off at approximately the same location where Warthen had seen Murphy meet Cook and Terrhagen the preceding night, they saw a man whom they did not then know, but whom they identified in court as petitioner George Ker. [Tr. of R. pp. 23-24, 28, 84-86, 89, 91, 94-95, 97-99, 102-105.] The officers watched Murphy drive past them, tailed him but lost contact when he turned off his lights after entering the oil fields, returned to their point of vantage, then saw him return. [Tr. of R. pp. 23, 88-89.] Murphy was at this time the officers' primary concern; they became interested in Ker "in that he was parked there alone in that location." [Tr. of R. p. 88.] Murphy stopped behind the Ker automobile, walked up to it on the driver's side and "appeared to have a conversation with him." [Tr. of R. pp. 23-24.] Warthen heard none of the conversation. [Tr. of R. p. 27.] Nor did he see anything pass between the two men, for "Due to the distance and the fact it wasn't extremely light . . . I don't believe I could have seen anything had they had it in their hands." [Tr. of R. pp. 27, 90.]

Immediately thereafter, Ker drove away, going south, then east on Slauson to La Brea, and north on La Brea for approximately one block. Warthen and

Markman followed him, but lost contact when Ker made a U-turn in the middle of the street between intersections and headed south on La Brea. However, having obtained the license number of the Ker vehicle, Warthen checked the registration with the Department of Motor Vehicles and ascertained that it was registered to Douglas Ker, at 4801 Slauson. This information he then communicated to Deputy Berman within 15 to 30 minutes of the meeting between Ker and Murphy which he and Markman had observed. [Tr. of R. pp. 24, 26, 91-92.]

Deputy Berman was one of the arresting officers in the case. Berman had received information concerning petitioner George Ker as early as November 1959. This consisted of "bits of information in regard that he was selling Marijuana from his residence, and that he was possibly securing this Marijuana from Ronnie Murphy, who is the alias of Roland Murphy." In early 1960, Berman received a "mug" picture of Ker from the Inglewood Police Department and he continued to receive information about him until May. [Tr. of R. pp. 29-30.] Between May and July, he likewise received information concerning Ker from one Robert J. Black. Black had previously given Berman information which resulted in two arrests and in facilitating the investigation of Murphy and Berman believed him to be a reliable informant. [Tr. of R. pp. 30-31.] Black told Berman that he, Ker, and other persons had purchased quantities of marijuana from Murphy.[2] [Tr. of R. p. 33.]

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[2]The answer at the foot of page 33 of the Transcript of Record was corrected, by stipulation filed in the District Court of Appeal on July 17, 1961, to read as follows: "In regard to Mr. Murphy,

Pursuant to this information, and having learned from Cook and Warthen what had occurred that night and the preceding night, Berman went with Warthen and Deputy Love to an apartment house at 4801 West Slauson Avenue. [Tr. of R. pp. 29-31.] Upon their arrival, Warthen went to the parkling lot and ascertained that Ker's automobile was there. Then he directed another officer to see whether there was anyone in Ker's apartment. After learning that petitioners were home, Warthen went to the manager's office, identified himself and told the manager that he was going to enter Apartment No. 29 because he "had reason to believe there was a large quantity of Marijuana in the apartment." He asked the manager for the key "so that we would not have to knock the door down," and the manager said he wanted to call his attorney. [Tr. of R. pp. 31, 92-93.]

Warthen obtained the key from the manager and went to the apartment. He unlocked the door and was the first to enter, being careful to be extremely quiet on entering to protect "whatever evidence" was in the apartment "[B]ecause on many, many occasions persons have flushed narcotics down toilets, pushed them down drains and sinks and many other methods of getting rid of them prior to my entrance when I have

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that he had purchased quantities of marijuana (~~for~~) *from* Mr. Murphy, that Mr. Ker had purchased quantities of marijuana (~~for~~) *from* Mr. Murphy, and other persons had purchased quantities of marijuana from Mr. Murphy." A similar stipulation is on file with this Court. Black took the stand and denied having or giving Berman any information about Ker. [Tr. of R. p. 40.] Murphy was arrested July 30, 1960 and a complaint was filed against him for violation of the federal narcotic laws. [Tr. of R. p. 29.]

made noises in the process of entering."[3] [Tr. of R. p. 93.]

Warthen did not describe what occurred upon his entry into the apartment. Berman testified that upon entering he observed it to consist of a large living room, a kitchen, a bathroom and a bedroom. [Tr. of R. p. 60.] When asked to describe the entry in detail, he said:

> "We entered the apartment, I observed the defendant, George Ker, to be seated on the couch in the living room. As we entered he stood up and faced us. I displayed my identification, stated, 'We are Sheriff's Narcotics Officers, conducting a narcotics investigation.' Simultaneously to that statement the defendant Diane Ker, walked from the kitchen into the living room. I identified myself to her, stated the same facts, then immediately walked to the kitchen without entering, standing in the doorway I observed a small scale on the top of the sink. The top of the scale was the brick-like—brick-shaped package containing the green leafy substance." [Tr. of R. p. 61.]

After seeing the marijuana on the scale,[4] Berman beckoned petitioners and Warthen into the kitchen. Pointing to the package, he asked petitioners "What is this?" and they replied they did not know. When Berman said: "It appears to be Marijuana to me. Is it yours?" petitioners did not answer. Then he "advised

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[3]In order to further guard against an anticipated destruction of evidence, Deputy Markman was stationed beneath the window of the Ker apartment. He testified: "That is a usual procedure in case evidence of any nature would be attempted to be disposed of by throwing it out the window." [Tr. of R. p. 96.]

[4]The package [Ex. 1] contained 2-2/10 lbs., or one kilogram of the contraband. [Tr. of R. pp. 31, 49-50.]

the defendants that they were under arrest for suspicion of violating the State Narcotic Law." [Tr. of R. pp. 61-62.]

Deputy Markman who, as previously mentioned, had been stationed beneath petitioners' apartment window, entered the apartment a minute or a minute and a half after the other officers. When he did so, petitioners and the other officers were in the kitchen. [Tr. of R. p. 96.] He heard Berman say: "[S]o that there will be no misunderstanding, we are narcotics officers conducting a narcotic investigation, and you are placed under arrest for violating—suspicion of violating State Narcotic Laws." [Tr. of R. p. 97.]

Petitioner George Ker testified as follows concerning the officers' entry:

> "Well, I didn't know what was going on and I stood up from my position sitting on the couch, and the officers came in, said, 'You are under arrest', and handcuffed me. Two of them handcuffed me. One went into the bedroom, the other officer went into the kitchen, right past my wife where she was standing right at the doorway there, and then come out and said, 'Is this yours? We want you to come in here and see this.' So we went in there, well, they took us in there, and said, 'Is this yours?' I said, 'No.' They asked us if we had any knowledge that it was there, if it was ours, and we said, 'No', it wasn't ours, and we didn't know how it got there. They had asked us these questions and we had just answered, 'No.'" [Tr. of R. pp. 68-69.]

The remaining evidence may be set out more briefly. After asking petitioners whether they had any other contraband, and receiving a negative answer, the officers (in the words of the court below):

> ". . . . [T]hen took defendants into the bedroom; there they saw a box containing ½ ounce of marijuana (Exhibit 2) atop a dresser; asked if it was theirs, defendants remained silent. Sergeant Warthen searched the kitchen and found in the cupboard a brown manila bag containing ½ ounce of marijuana (Exhibit 2); asked to whom it belonged, defendants remained silent. Warthen also saw in the kitchen a cup containing coffee, a partially eaten slice of toast and some silverware on the table, and a coffee pot on the drainboard close to the marijuana on the scales. Mrs. Ker told Warthen that she had been sitting at the table in the kitchen drinking coffee and eating toast, but had not looked in the direction of the marijuana. Sergeant Warthen then asked the defendants if they owned any other auto than the one parked in the back and which they had seen Ker driving; Ker said they did not; Mrs. Ker remained silent. Berman had information Mrs. Ker owned a car; around noon the next day he went to the car which was registered in the name of Diane Ker, searched it and found marijuana seed under the rear seat and a bag containing marijuana (Exhibit 3) in the dashboard compartment." (*People v. Ker, supra*, 195 Cal. App. 2d 246, 252, 15 Cal. Rptr. 767, 770.)

ARGUMENT.

I.

Under the Fourteenth Amendment to the United States Constitution California Remains Free to Apply and Enforce Her Own Reasonable "Workable Rules Governing Searches and Seizures."

It was said in the main opinion in *Mapp v. Ohio, supra,* 367 U. S. 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684, that the right of privacy guaranteed by the Fourth Amendment is to be enforced against the states by requiring them, under the due process clause of the Fourteenth, to exclude, in criminal trials, evidence obtained through an unlawful search and seizure. This much is certain. What remains uncertain is whether, by virtue of some invisible emanation from the Fourteenth Amendment, the states are required to apply to cases arising in their courts the identical standards that are applied to cases arising in the federal courts under the Fourth.

California did not adopt the exclusionary rule because it was obliged to do so. It did so because "Experience has demonstrated . . . . that neither administrative, criminal nor civil remedies are effective in suppressing lawless searches and seizures." (*People v. Cahan, supra,* 44 Cal. 2d 434, 447, 282 P. 2d 905, 913.) And, in so doing, the California Supreme Court held itself free to develop "workable rules governing searches and seizures": to follow federal precedent when reasonable, disregarding it where it set "needless limitations on the right to conduct reasonable searches and seizures or to secure warrants. . . . ." (*People v.*

Cahan, *supra*, 44 Cal. 2d 434, 450-451, 282 P. 2d 905, 915. See, for example, *People v. Simon*, 45 Cal. 2d 645, 649, fn., 290 P. 2d 531, 533.)

It is the position of respondent that California's uncompelled, uncoerced decision to establish the exclusionary rule is one to be praised, not censured, that its development of standards reasonably adapted to its own needs is one to be encouraged, not stultified, and that the constitutional provisions ought not to be so dogmatically interpreted as to substitute for the decisional *law of California* rules created by the federal courts for use in a separate judicial system, involving separate crimes, a separate criminal procedure, and separate agencies of enforcement having separate problems and methods of enforcement. Acceptance of this position respondent submits, is necessary to the maintenance of a system in which the states are free, within "a concept of ordered liberty," to administer their own criminal laws and to seek salvation in their own way.

There are compelling practical reasons for allowing the states a degree of autonomy (hence a degree of diversity) in developing rules of search and seizure to be applied in their own courts. This brief was prepared at a desk near a window overlooking the Los Angeles Civic Center. Two blocks away, in the Police Administration Building, are based the dedicated, competent and well-trained men responsible for local law enforcement in the area. One block away, in the United States Courthouse and Post Office Building, are based the men, equally dedicated, equally competent, equally well-trained, who are responsible for enforcing federal law in a somewhat larger area. But their problems and methods are not necessarily the same.

Most federal arrests are made with a warrant; most local arrests are not. Local officers cruise in prowl cars; federal agents do not. Local police pound a beat at night; federal agents do not. Their investigations are often deliberate and prolonged, conducted under the supervision of an Assistant United States Attorney, and involving a limited category of crime. The local officer, on the other hand, is confronted, at every moment, and on the spur of the moment, with preventing and detecting every crime the imagination can conceive, and the law has the foresight to prohibit. And if this is the case in a large metropolis, how much more striking is the divergence between the situations confronting the federal agent and the officer in a rural California area, whose police force may consist of a chief of police and a handful of subordinates.

Furthermore, California shares with New York and a few other border and seashore states a narcotic problem which has severely taxed its enforcement and rehabilitation facilities. Other states which do not have this problem have yet other problems of enforcement which California does not share. There being a diversity of problems among the states, there should be permitted them a reasonable divergence in the specific standards they adopt in enforcing the constitutional right to privacy which is guaranteed to all who reside in them. (See Weinstein, Local Responsibility for Improvement of Search and Seizure Practices, 34 Rocky Mt. L. Rev. 150 (1962).)

To say, with petitioners, that there must be uniformity, would be to take the line of least resistance, to evade the inconsistencies in previous decisions of this Court and to forget that "[T]he course of true law

pertaining to searches and seizures, as enunciated here, has not—to put it mildly—run smooth." (Mr. Justice Frankfurter concurring in *Chapman v. United States*, 365 U. S. 610, 618, 5 L. Ed. 2d 828, 81 S. Ct. 776. See, also, Collings, Toward Workable Rules of Search and Seizure—An Amicus Curiae Brief, 50 Cal. L. Rev. 421 [1962], to which respondent is heavily indebted.) To say, with petitioners, that without uniformity "police officers will still be uncertain as to the legality of a search", is to ignore the practical and conceptual difficulties involved in imposing it. In this respect, California's experience is of immediate relevance. Her courts have decided over 500 search and seizure cases in the past 7½ years. (See App. A.) In the next 7½ years they will decide as many more. And, as this Court has recognized, "there can be no fixed formula . . ." (*Mapp v. Ohio, supra*, 367 U. S. 643, 653, 6 L. Ed. 2d 1081, 81 S. Ct. 1684.) To create one, or to attempt to create one, would be to open the gates to a flood of applications for writs of certiorari, all seeking a determination in a multitudinous variety of circumstantial detail, that Officer A did not have probable cause to arrest Offender B, or that Officer C conducted too extensive a search of premises belonging to Offender D. The burden upon this Court would rapidly become intolerable. And to hold that the states are necessarily bound by federal decisional law (such as it is and such as it may become) would be to inject into the law of California a confusion all would eventually

deplore, and to encourage the police to take risks in ambiguous cases in a hope that under some decision they have never heard of their conduct might perhaps be sustained. Law enforcement officers in California know that if they transgress the limitations placed upon them by her appellate courts the criminal will go free because they have blundered. Often they must decide, within a few moments, whether to arrest or not to arrest. In cases where the law of the state is clear, but this Court has not yet spoken, are they to reconcile at their peril conflicting decisions in the Circuits or must they stay their hand?

Respondent submits that this Court should not summarily disregard California's experience in a desire for symmetry, and should not strike down the standards of police conduct imposed by her judiciary in an effort to "protect both the rights guaranteed by the constitutional provisions and the interest of society in the suppression of crime." (*People v. Cahan, supra*, 44 Cal. 2d 434, 451, 282 P. 2d 905, 915.) If these standards are such that reasonable men may regard them as affording adequate protection to the right of privacy, they ought to be sustained. In the remainder of this brief, respondent will urge that the California courts have adopted such standards and that under those standards petitioners' arrest and the seizure of the contraband in their possession can and should be upheld.

II.

There Was No Violation of Petitioners' Rights Under the Fourteenth Amendment to the United States Constitution.

Respondent contends that the marijuana in petitioners' possession was not obtained by the officers through an unreasonable search and seizure. In so contending, respondent will justify its position upon the basis of California and federal law where they agree, and, where they apparently disagree, upon the basis of California law, which respondent submits is reasonable, is not in derogation of constitutional guarantees and provides adequate standards for the protection of persons accused of crime in the California courts.

A. The Officers Had Probable Cause to Arrest Petitioner George Ker for Possessing Marijuana at the Time They Entered the Apartment.

Section 836 of the California Penal Code provides:

> "A peace officer may make an arrest in obedience to a warrant, or may, without a warrant, arrest a person: 1. Whenever he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence. 2. When a person arrested has committed a felony, although not in his presence.[5] 3. Whenever he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed."

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[5]Subdivision 2 will not, however, justify a search incident to an arrest where the arrest itself is not based upon "reasonable cause." (*People v. Brown*, 45 Cal. 2d 640, 290 P. 2d 528.)

The terms "reasonable cause" and "probable cause" are synonymous. (*People v. Kilvington*, 104 Cal. 86, 37 Pac. 799.) The latter is defined as follows:

> "Probable cause exists where the facts and circumstances within their [the officers'] knowledge, and of which they had reasonably trustworthy information, [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." (*Brinegar v. United States*, 338 U. S. 160, 175-176, 93 L. Ed. 1879, 69 S. Ct. 1302.)[6]

Respondent submits that, acting as "reasonable and prudent men, not legal technicians," the officers were warranted in believing Ker to be in possession of marijuana at the time they approached the apartment. It must be borne in mind that "[P]robable cause is not to be evaluated from a remote vantage point of a library but rather from the viewpoint of a prudent and cautious police officer on the scene at the time of arrest. The question to be answered is whether such an officer in the particular circumstances, conditioned by his observations and information, and guided by the whole of his police experience, reasonably could have believed that a crime had been committed by the person to be arrested." (*Jackson v. United States* (D. C. Cir.), 302 F. 2d 194, 196.)

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[6]*Cf. People v. Kilvington, supra*, 104 Cal. 86, 92, 37 Pac. 799, 801: "There must be such a state of facts as would lead a man of ordinary care and prudence to believe, or entertain an honest and strong suspicion, that the person is guilty."

The following facts were known to the officers on the night of July 27:

1. Between November 1959 and May 1960, Deputy Berman had received information that Ker was obtaining marijuana from Roland Murphy and selling it from his home. [Tr. of R. pp. 29-30.] Between May and July, he learned from Black, a reliable informant, that Ker had purchased quantities of marijuana from Murphy. [Tr. of R. p. 33.]

2. On July 26, while conducting a narcotics investigation, Deputy Cook witnessed a transaction between Murphy and one Terrhagen. Murphy's *modus operandi* was as follows: He met Terrhagen at a bowling alley in Inglewood. Terrhagen drove Cook to the vicinity of Slauson and Fairfax and parked by some vacant fields north of the intersection. Murphy's car passed by heading north, then returned, made a U-turn, and parked alongside Terrhagen, who got into Murphy's car, drove north with him into the oil fields, returned and left the car, carrying a kilo brick of marijuana, entered his own car, made a U-turn and took Cook to his home. [Tr. of R. pp. 18-20.]

3. Cook reported what he had seen to Berman and to Deputy Warthen, who had maintained Cook and Terrhagen under surveillance. [Tr. of R. pp. 21-23.]

4. The next night, Warthen and Deputy Markman followed Murphy in the same car to the same bowling alley, lost contact with him but went to the same area as the night before, saw a car parked in approximately the same location where Terrhagen had parked his, observed Murphy drive north into the oil fields, return, park beside the other car, walk up and talk to the driver,

who left, making a U-turn and causing the officers to lose contact. [Tr. of R. pp. 23-24, 27, 84-86, 88-89, 91, 94-95, 97-99, 102-105.]

5. Within 15 to 30 minutes of the meeting between Murphy and the man in the other car, Warthen traced the license number and ascertained Ker's name and address, giving this information and telling what he had observed to Berman, who, as previously mentioned, had learned Ker was buying marijuana from Murphy and selling it from his home, who had seen Ker's photograph and who could presumably identify him. [Tr. of R. pp. 24, 26, 29-30, 33, 92.]

It is true that Warthen and Markman did not observe an actual exchange of contraband between Murphy and Ker. But there is a law of uniformity in nature upon which all men, including the police, have a right to rely. They had witnessed a pantomime which repeated in all essential details the transaction of the previous night. They were entitled to regard Ker's U-turn as furtive conduct. They and their fellow officers were entitled to view what they had observed in the light of the information received from Black, an informer whose veracity had been tested and not found wanting. (*Draper v. United States*, 358 U. S. 307, 312-313, 3 L. Ed. 2d 327, 79 S. Ct. 329; *People v. Boyles*, 45 Cal. 2d 652, 290 P. 2d 535; *Willson v. Superior Court*, 46 Cal. 2d 291, 294 P. 2d 36.) And upon learning that Ker was at home, they were entitled to believe, as reasonable and prudent men, that he had the contraband with him in his apartment. They were not obliged to wait until they had proof sufficient to sustain his conviction. (*Brinegar v. United States*, *supra*, 338 U. S. 160, 172-175, 93 L. Ed. 1879, 69 S. Ct. 1302.)

At the conclusion of the hearing on probable cause, the trial court said: "Therefore, the court determines it is probable cause, and we will proceed tomorrow morning with this case." [Tr. of R. p. 45.] This finding was upheld by the court below. (*People v. Ker, supra*, 195 Cal. App. 2d 246, 15 Cal. Rptr. 767.) Not only was it a reasonable one, it was a finding which, under traditional canons of review, this Court is obliged to respect. (*Eisenba v. California*, 314 U. S. 219, 238, 86 L. Ed. 166, 62 S. Ct. 280; *Thomas v. Arizona*, 356 U. S. 390, 402-403, 2 L. Ed. 2d 863, 78 S. Ct. 885; *Crooker v. California*, 357 U. S. 433, 435, 2 L. Ed. 2d 1448, 78 S. Ct. 1287; *Culombe v. Connecticut*, 367 U. S. 568, 603-604, 6 L. Ed. 2d 1037, 81 S. Ct. 1860.)

B. The Officers Lawfully Entered the Apartment for the Purpose of Arresting Petitioner George Ker.

Section 844 of the California Penal Code provides:

> "To make an arrest, a private person, if the offense be a felony, and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired."

Upon ascertaining that Ker's automobile was parked in the parking lot and that petitioners were at home, Warthen obtained a key from the manager and, followed by Berman and Deputy Love, he made a surreptitious entry into the apartment. [Tr. of R. pp. 31, 92-93.] As found by the court below, the entry

was for the purpose of making an arrest. (*People v. Ker, supra*, 195 Cal. App. 2d 246, 15 Cal. Rptr. 767.)

The officers did not comply with Section 844. But respondent submits that, as likewise found by the court below, compliance was unnecessary under a judicially created exception to the statute. The California Supreme Court has said (*People v. Maddox*, 46 Cal. 2d 301, 305-306, 294 P. 2d 6, 9-10):

> "The demand and explanation requirements of section 844 present a more difficult problem. The officer's compliance with them will delay his entry, and cases might arise in which the delay would permit destruction or secretion of evidence so that what the search turns up would depend on the officer's compliance with the section. In other cases, however, the evidence may not be readily disposed of, and in still others it may be impossible to determine whether or not the evidence would still have been available had there been the delay incident to complying with the section.
>
> "It must be borne in mind that the primary purpose of the constitutional guarantees is to prevent unreasonable invasions of the security of the people in their persons, houses, papers, and effects, and when an officer has reasonable cause to enter a dwelling to make an arrest and as an incident to that arrest is authorized to make a reasonable search, his entry and his search are not unreasonable. Suspects have no constitutional right to destroy or dispose of evidence, and no basic constitutional guarantees are violated because an officer succeeds in getting to a place where he is entitled to be more quickly than he would, had he

complied with section 844. Moreover, since the demand and explanation requirements of section 844 are a codification of the common law, they may reasonably be interpreted as limited by the common law rules that compliance is not required if the officer's peril would have been increased or the arrest frustrated had he demanded entrance and stated his purpose. (Read v. Case, 4 Conn. 166, 170 [10 Am. Dec. 110]; see Rest., Torts, § 200, com. d.) Without the benefit of hindsight and ordinarily on the spur of the moment, the officer must decide these questions in the first instance. When, as in this case, he has reasonable grounds to believe a felony is being committed and hears retreating footsteps, the conclusion that his peril would be increased or that the felon would escape if he demanded entrance and explained his purpose, is not unreasonable. In this proceeding we are not concerned with whether or not the officer's failure to do so would have justified defendant in using force to protect his person or property, or whether or not a jury, in a trespass action might conclude that reasonable cause for the officer's failure to comply with the demand and explanation requirements did not exist. Moreover, since the officer's right to invade defendant's privacy clearly appears, there is no compelling need for strict compliance with the requirements of section 844 to protect basic constitutional guarantees. (Cf. People v. Boyles, supra, 45 Cal. 2d 652, 656; People v. Cahan, supra, 44 Cal. 2d 434, 442, footnote.) We conclude therefore that when there is reasonable cause to make an arrest and search and

the facts known to him before his entry are not inconsistent with a good faith belief on the part of the officer that compliance with section 844 is excused, his failure to comply with the formal requirements of that section does not justify the exclusion of the evidence he obtains."

The exception defined and defended in *Maddox* has been interpreted to apply to cases where the officers reasonably believed that if they did not gain immediate entrance evidence would be destroyed. (*People v. Hammond*, 54 Cal. 2d 840, 9 Cal. Rptr. 233; *People v. Ruiz*, 146 Cal. App. 2d 630, 304 P. 2d 175; *People v. Ramsey*, 157 Cal. App. 2d 178, 330 P. 2d 592. But see *Miller v. United States*, 357 U. S. 301, 309, 2 L. Ed. 2d 1332, 78 S. Ct. 1190, where *Maddox* is referred to without approval or disapproval.)[7]

In the present case, Markman was stationed beneath petitioners' window, "a usual procedure in case evidence of any nature would be attempted to be disposed of by throwing it out the window." [Tr. of R. p. 96.] And Warthen testified that he entered quietly "to protect whatever is in the apartment," because "on many, many occasions persons have flushed narcotics down toilets, pushed them down drains and sinks and many other methods of getting rid of them prior to my entrance when I have made noises in the process of entering." [Tr. of R. p. 93.]

It is said that allowing suspects to dispose of narcotic contraband with immunity would be "preferable

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[7] The government conceded in *Miller* that under the facts of that case there were no "circumstances excusing compliance" (*Loc. cit.*)

to fostering the cancer of this surreptitious, clandestine, stealthy, furtive entry, without a warrant, into a man's home." (Brief of Amicus Curiae, p. 10.) But the law should not be guilty of such self-stultification. "Here we are dealing with a type of property that, at a moment's notice and the merest suspicion that government agents are on the scent, can be flushed down a toilet." (*Carlo v. United States* (2d Cir.), 286 F. 2d 841, 847.)* It is manifest that if the officers had knocked on the door, politely identified themselves and explained their purpose, the marijuana would instantly have been jettisoned and it is submitted that the California rule permitting them entry is a reasonable one which ought to be upheld.

C. The Kilo Brick of Marijuana Was Lawfully Seized as an Incident to the Lawful Arrest of Petitioner George Ker.

The Fourth Amendment does not condemn all searches; it condemns unreasonable ones. (*Harris v. United States*, 331 U. S. 145, 150, 91 L. Ed. 1399, 67 S. Ct. 1098.) Whether a search is reasonable is a question to be determined in the first instance by the trial court upon the facts of a particular case. (*Go-Bart Importing Co. v. United States*, 282 U. S. 344, 357, 75 L. Ed. 374, 51 S. Ct. 153; *United States v. Rabinowitz*, 339 U. S. 56, 63, 94 L. Ed. 653, 70 S. Ct. 430; *Mapp v. Ohio, supra*, 367 U. S. 643, 653, 6 L. Ed. 2d 1081, 81 S. Ct. 1684.) And respondent presumes it to be settled law that officers have the right to search the person of the accused, and the premises under his immediate control, when the search is

*A "type of property" whose use is not simply *malum prohibitum* but can lead to the total demolition of the personality.

incident to a lawful arrest pursuant to a warrant or based upon probable cause. (*Weeks v. United States*, 232 U. S. 383, 392, 58 L. Ed. 652, 34 S. Ct. 341; *Harris v. United States*, *supra*, 331 U. S. 145, 150-152, 91 L. Ed. 1399, 67 S. Ct. 1098; *Draper v. United States*, *supra*, 358 U. S. 307, 310-311, 3 L. Ed. 2d 327, 79 S. Ct. 329.)

It must be borne in mind that the officers had probable cause to arrest Ker at the moment they entered the apartment and they entered it lawfully in a reasonable belief that a request to be admitted would result in the disposal of narcotic contraband. The arrest of Ker was therefore a lawful one, and the question is whether the kilo brick of marijuana found in the kitchen [Ex. 1] was lawfully seized as an incident to the arrest. No contention is made that the marijuana later found in the bedroom, the kitchen cupboard and Mrs. Ker's automobile [Exs. 2 and 3] was unlawfully secured for reasons apart from those relied upon in challenging the seizure of the kilo brick.[9]

Petitioners say that the seizure may not be sustained because the officers did not have a search warrant and because the "search" preceded the arrest and the arrest was merely a pretext for a search.

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[9]Furthermore, no objection was interposed to their admission in evidence. [Tr. of R. p. 68.] An objection was necessary under California law. (*People v. Brittain*, 149 Cal. App. 2d 201, 308 P. 2d 38.) This procedural requirement "must be respected." (*Mapp v. Ohio*, *supra*, 367 U. S. 643, 659, fn. 9, 6 L. Ed. 2d 1081, 81 S. Ct. 1684.)

1. *The Seizure Was Lawful Notwithstanding the Absence of a Search Warrant.*

Petitioners say: "The question whether probable cause is a sufficient substitute for a search warrant has been considered by this Honorable Court with varying results. In some cases the court has held that probable cause to believe that a crime has been committed is enough. But this rule has been specifically rejected with respect to private dwellings where it has been held that a search warrant is required." (Brief for Petitioners, p. 7.)

In this connection, reliance is mainly placed upon *Agnello v. United States*, 269 U. S. 20, 70 L. Ed. 145, 46 S. Ct. 4; *Taylor v. United States*, 286 U. S. 1, 76 L. Ed. 951, 52 S. Ct. 466; *Johnson v. United States*, 333 U. S. 10, 92 L. Ed 436, 68 S. Ct. 367; and *Chapman v. United States, supra*, 365 U. S. 610, 5 L. Ed. 2d 828, 81 S. Ct. 776. Respondent submits, however, that in the light of their facts, none of these cases are susceptible of so broad a construction.

In *Agnello*, this Court held that the search of a house was not an incident to a lawful arrest made in another house some two blocks away. In *Taylor*, this Court struck down a warrantless search of an unoccupied garage containing 122 cases of whiskey which were unlikely to disappear while the officers went to obtain a warrant. This Court said (286 U. S. 1, at p. 6): "The record does not make it necessary for us to discuss the rule in respect of searches in connection with an arrest. No offender was in the garage; the action of the agents had no immediate connection with an arrest. The purpose was to secure evidence to support

some future arrest." In *Johnson*, this Court held improper a warrantless search of an apartment, the government in effect having conceded that the officer did not have probable cause to arrest the defendant until after he had entered and discovered that it was the defendant who was responsible for the odor of opium that impelled him to enter. In *Chapman*, officers having the apparent consent of his landlord smelled the odor of whiskey mash in the defendant's house, entered it when nobody was home and found a distillery, together with 1300 gallons of mash that were unlikely to disappear. The government in effect conceded that the search was unreasonable, relying only upon a Georgia landlord's supposed right to "view waste" (a right this Court found to be nonexistent) and, the defendant not being present, the search was obviously not incident to his later arrest.

If the foregoing cases hold, which respondent disputes, that the police may not search a dwelling as an incident to a lawful arrest made therein without first obtaining a search warrant, what is to be done with *Rabinowitz*?[10] There it was said (339 U. S. 56, at p. 66): "The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable."[11] This is the test applied in Cali-

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[10]339 U. S. 56, 94 L. Ed. 653, 70 S. Ct. 430.

[11]A federal statute authorizes agents of the Bureau of Narcotics and Bureau of Customs to make arrests without warrant in narcotics cases "where the violation is committed in the presence of the person making the arrest or where such person has reasonable grounds to believe that the person to be arrested has committed or is committing such violation." (26 U.S.C.A. 7607.) It has been held that the statute does not apply only where there is no time to obtain a search warrant. (*United States v. Vasquez* (D.C.E.D.N.Y.), 183 F. Supp. 190.)

fornia. (*People v. Winston*, 46 Cal. 2d 151, 162-163, 293 P. 2d 40, 46-47.) If it is to disappear in a new synthesis of federal law, respondent nevertheless submits that in maintaining it California would in no way depart from a "concept of ordered liberty" or deprive its citizens of "the security of one's privacy against arbitrary intrusion by the police."

In the first place, California has condemned the general exploratory search and her courts have not hesitated to reverse convictions based upon evidence obtained through searches conducted in excess of reasonable bounds. (See *People v. Schaumloffel*, 53 Cal. 2d 96, 346 P. 2d 393; *People v. Mills*, 148 Cal. App. 2d 392, 306 P. 2d 1005.) In the second place, it can be held by reasonable men anxious to preserve constitutional guarantees that an inflexible rule requiring a search warrant if there is time to get one would be completely unworkable. Professor Collings writes in the article previously mentioned (50 Cal. L. Rev. 421, at 466-447):

> ". . . Overextensive use of search warrants would put an impossible burden on our already undermanned law enforcement personnel. To illustrate, suppose that officers have an anonymous tip that someone is selling narcotics at a specified address. They have insufficient information to justify either an arrest or a search warrant. Consequently, they watch the house and see known addicts enter and leave. They question one addict who admits making a buy. They may or may not arrest him because their primary interest is in the seller. At this point it would be tactically unsound for the officers to go after a warrant. Someone

ha[illegible] seen them talking to the addict and t[illegible] the seller. The supply of narcotics is di[illegible] So they knock on the door and make arr[illegible] Assuming the rule is that they must get [illegible] arrant before searching the house, an rec[illegible] begins. A fellow officer must be o[illegible] the house (if the arresting officer [illegible] ate enough to have one with him). The c[illegible] er cannot take the defendant to the sta- al[illegible] so he must wait for assistance. When ar[illegible] ve[illegible], he takes the defendant to the station h[illegible] him. Thereafter, he goes to the district [illegible] office, and after a short wait, sees a [illegible] ry a[illegible] satisfies him that a warrant should [illegible]e. T[illegible] gether they dictate an affidavit (which h[illegible] to be lengthy to satisfy existing stand-) to a stenographer. She types the affidavit wa[illegible] rant. After checking them for accuracy, [illegible]pu[illegible] ty and peace officer go to the magistrate. [illegible] a short wait, since a trial is in progress, the str[illegible]te sees them and satisfies himself that [illegible]rrant should issue. The peace officer then [illegible]ack to the house to execute the warrant. [illegible]rocess can be completed in two hours under [illegible]nditions. But how often will conditions be [illegible] The arrest may take place many miles away [illegible]he nearest deputy district attorney. It may night (most arrests are), during the lunch [illegible] or over the weekend. It will often be im- [illegible]le to find a deputy district attorney other during business hours; even if one did, he still have the problem of locating a magis-

Furthermore, as respondent understands their argument, petitioners are contending that the officers should have obtained a warrant before entering the apartment. They say:

> "The officers in the instant case had the time to obtain such a warrant. They were not in hot pursuit of a criminal who had committed a felony in their presence and as a matter of fact, sufficient time was taken to identify the owner of the vehicle in which it was alleged that the defendant George Ker was driving and sufficient time was taken for the arresting officer to join the other officer at the apartment building in which the defendants resided." (Brief for Petitioners, p. 6.)

But the argument is untenable. According to Markman, he and Warthen arrived at the corner of Slauson and Fairfax at 8:45 P.M. and Murphy pulled up behind Ker's vehicle approximately twelve minutes later. [Tr. of R. p. 95.] Within 15 to 30 minutes thereafter, Warthen had identified the car through the Department of Motor Vehicles and conveyed Ker's name and address to Berman, together with an account of what he and Markman had just witnessed. [Tr. of R. pp. 24, 26, 29, 92.] Immediately after their conversation, Warthen, Berman and their fellow officers went to the apartment house, entering the apartment 15 or 20 minutes later. [Tr. of R. pp. 92-93.] It can hardly be doubted that the officers were in hot pursuit, for had Ker not made a U-turn in the middle of the street while heading north on La Brea [Tr. of R. p. 24] they would have been able to follow him home.

2. The Seizure Was Incident to a Lawful Arrest.

As previously mentioned, petitioners say that since a search preceded Ker's arrest the arrest must be regarded as a pretext for the search and the latter condemned as unreasonable. But did the discovery of the marijuana brick constitute a search? As the officers entered the apartment and identified themselves to Ker, Mrs. Ker walked simultaneously from the kitchen to the living room. Berman identified himself to her, took a few steps to the kitchen door and, *without entering the kitchen*, he saw the marijuana on the scale on top of the sink. [Tr. of R. pp. 31, 61.] The contraband was in plain sight and to see what is in plain sight does not constitute a search. *(United States v. Lee*, 274 U. S. 559, 563, 71 L. Ed. 1202, 47 S. Ct. 746; *United States v. Lefkowitz*, 285 U. S. 452, 465, 76 L. Ed. 877, 52 S. Ct. 420; *Cradle v. United States* (D. C. Cir.), 178 F. 2d 962, 963; *Ellison v. United States* (D. C. Cir.), 206 F. 2d 476, 478; *People v. Martin*, 45 Cal. 2d 755, 290 P. 2d 855; *People v. West*, 144 Cal. App. 2d 214, 300 P. 2d 729; *People v. Roberts*, 182 Cal. App. 2d 431, 6 Cal. Rptr. 161.)

If, however, which respondent denies, the marijuana was found during the course of a search, respondent nevertheless submits that the fact it was discovered before the officers told petitioners they were under arrest should not be held to invalidate the search. The officers had probable cause for arresting Ker before they entered the apartment and the validity of the arrest did not depend upon the discovery of the contraband. Having lost contact with his automobile, they were not guilty of rejecting a convenient opportunity to arrest him earlier. The arrest occurred within 1 to 1½ minutes

after the officers effected their entry. [Tr. of R. p. 96.] California has declined to adopt a fixed rule that a search may be justified as incidental to a lawful arrest only if the arrest precedes the search. (*People v. Simon, supra,* 45 Cal. 2d 645, 290 P. 2d 531.) The California Supreme Court said in *Simon* (45 Cal. 2d, at pp. 648-649, 290 P. 2d, at p. 533):

> ". . . Thus, if the officer is entitled to make an arrest on the basis of information available to him before he searches, and as an incident to that arrest is entitled to make a reasonable search of the person arrested and the place where he is arrested, there is nothing unreasonable in his conduct if he makes the search before instead of after the arrest. In fact, if the person searched is innocent and the search convinces the officer that his reasonable belief to the contrary is erroneous, it is to the advantage of the person searched not to be arrested. On the other hand, if he is not innocent or the search does not establish his innocence, the security of his person, house, papers, or effects suffers no more from a search preceding his arrest than it would from the same search following it. In either case the important considerations are whether the officer had reasonable cause before the search to make an arrest and whether the search and any seizures incident thereto were or were not more extensive than would reasonably be justified as incident to an arrest. (See United States v. Rabinowitz, 339 U. S. 56, 60-64 [70 S. Ct. 430, 94 L. Ed. 653].) We conclude, therefore, that a search is not unlawful merely because it precedes rather than follows the arrest."

In view of the foregoing, it cannot reasonably be contended that the California rule is incompatible with a "concept of ordered liberty" or that it gives less than adequate protection to the security of one's person and property against arbitrary conduct by the police. Respondent submits, therefore, that the rule ought not to be struck down and conduct of the police in reliance upon it ought not to be condemned.

D. The Arrest of Petitioner Diane Ker Was Lawful.

It is also said: "Prior to entry into the apartment, no suspicion whatever attached to Diane K. Ker, and we suggest that, in all events, the entire proceedings were unlawful as to her." (Brief of Amicus Curiae, p. 2.) No argument whatever is presented in support of this suggestion and respondent submits that it is without merit.

Mrs. Ker was in the kitchen when the officers entered the apartment. She left it when they identified themselves to her husband. The contraband was in plain sight on the sink, the package "had a small tear in it" and a knife was lying on the sink. [Tr. of R. pp. 31, 61.] Furthermore, there was a coffee pot on the drainboard near the sink and on the kitchen table a partially eaten slice of toast and a cup containing coffee. [Tr. of R. p. 82.] These circumstances were surely sufficient to warrant the officers in entertaining a reasonable belief that she was jointly in possession of the contraband and in placing her under arrest.

Conclusion.

In the 7½ years since California adopted the exclusionary rule her courts have developed detailed standards of police conduct and applied them to a host of cases. These standards are adequate to protect her citizens from lawless police action without unreasonably diminishing police effectiveness. California has condemned both the roust and the fishing expedition. Her laws should not be superseded in an illusory quest for an elusive uniformity. In the present case, the conduct of the police was upheld by the California courts, applying the standards defended in the course of this brief. Petitioners have no remedy from this Court unless they were deprived of due process of law under the Fourteenth Amendment. Respondent submits that petitioners have not been deprived of due process and accordingly requests that the judgment of the District Court of Appeal of the State of California be affirmed.

Respectfully submitted.

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APPENDIX A.

The following is a reasonably comprehensive list of the California cases, decided since *People v. Cahan*, 44 Cal. 2d 434, 282 P. 2d 905, governing all phases of the law of arrest, search and seizure. The list includes cases involving privileged communications from informants.

Aday v. Superior Court, 55 Cal. 2d 789
Arata v. Superior Court, 153 Cal. App. 2d 767
Badillo v. Superior Court, 46 Cal. 2d 269
Bielicki v. Superior Court, 57 A. C. 647
Britt v. Superior Court, 58 A. C. 480
Byars v. Superior Court, 57 A. C. 654
Castiel v. Superior Court, 162 Cal. App. 2d 710
Coy v. Superior Court, 51 Cal. 2d 471
De Losa v. Superior Court, 166 Cal. App. 2d 1
Gascon v. Superior Court, 169 Cal. App. 2d 356
Hatjis v. Superior Court, 144 Cal. App. 2d 426
Hernandez v. Superior Court, 143 Cal. App. 2d 20
Lorenzen v. Superior Court, 150 Cal. App. 2d 506
Mitchell v. Superior Court, 50 Cal. 2d 827
Montgomery v. Superior Court, 146 Cal. App. 2d 622
Ovalle v. Superior Court, 202 A. C. A. 834
People v. Accardy, 184 Cal. App. 2d 1
People v. Acosta, 142 Cal. App. 2d 59
People v. Adame, 169 Cal. App. 2d 587
People v. Aguilar, 191 Cal. App. 2d 887
People v. Aguirre, 158 Cal. App. 2d 304
People v. Alaniz, 149 Cal. App. 2d 560
People v. Alaniz, 185 Cal. App. 2d 344
People v. Albert, 182 Cal. App. 2d 729
People v. Albino, 184 Cal. App. 2d 84

People v. Alcala, 169 Cal. App. 2d 468
People v. Alcala, 204 A. C. A. 14
People v. Alcria, 193 Cal. App. 2d 352
People v. Alesi, 169 Cal. App. 2d 758
People v. Alexander, 168 Cal. App. 2d 753
People v. Allen, 142 Cal. App. 2d 267
People v. Allen, 196 Cal. App. 2d 655
People v. Almarez, 190 Cal. App. 2d 380
People v. Alvarez, 154 Cal. App. 2d 694
People v. Alvidrez, 158 Cal. App. 2d 299
People v. Amado, 167 Cal. App. 2d 345
People v. Ambrose, 155 Cal. App. 2d 513
People v. Ambrose, 199 A. C. A. 885
People v. Ames, 151 Cal. App. 2d 714
People v. Amos, 181 Cal. App. 2d 506
People v. Amos, 190 Cal. App. 2d 384
People v. Anders, 167 Cal. App. 2d 65
People v. Anderson, 145 Cal. App. 2d 201
People v. Anderson, 199 A. C. A. 541
People v. Andrews, 153 Cal. App. 2d 333
People v. Anguiano, 198 Cal. App. 2d 426
People v. Anushevitz, 183 Cal. App. 2d 752
People v. Arketa, 207 A. C. A. 199
People v. Armenta, 197 Cal. App. 2d 707
People v. Arter, 169 Cal. App. 2d 439
People v. Ashcraft, 138 Cal. App. 2d 820
People v. Augustine, 152 Cal. App. 2d 264
People v. Avas, 144 Cal. App. 2d 91
People v. Baca, 184 Cal. App. 2d 693
People v. Baca, 198 Cal. App. 2d 391
People v. Baker, 135 Cal. App. 2d 1
People v. Baker, 170 Cal. App. 2d 240
People v. Ball, 162 Cal. App. 2d 465

People v. Baltazar, 159 Cal. App. 2d 595
People v. Baranko, 201 A. C. A. 234
People v. Barnett, 156 Cal. App. 2d 803
People v. Barnett, 159 Cal. App. 2d 22
People v. Barquera, 207 A. C. A. 765
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